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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF WASHINGTON

10 COMMUNITY ASSOCIATION FOR  
RESTORATION OF THE  
ENVIRONMENT, INC., a Washington  
11 Non-Profit Corporation  
*and*  
12 CENTER FOR FOOD SAFETY, INC.,  
a Washington, D.C. Non-Profit  
13 Corporation,

Plaintiffs,

14 v.

15 COW PALACE, LLC, a Washington  
Limited Liability Company, THE  
16 DOLSEN COMPANIES, a Washington  
Corporation, and THREE D  
17 PROPERTIES, LLC, a Washington  
Limited Liability Company,

18 Defendants.

NO. CV-13-3016-TOR

~~[PROPOSED]~~ CONSENT DECREE

19  
20  
~~[PROPOSED]~~ CONSENT DECREE

1 WHEREAS the Plaintiffs, the Community Association for Restoration of the  
2 Environment, Inc., and Center For Food Safety, Inc., initiated the above-captioned  
3 action by filing a Complaint on February 14, 2013, alleging that certain Defendants  
4 had violated the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*,  
5 seeking injunctive and declaratory relief and attorneys and expert witness fees and  
6 costs;

7 WHEREAS the Court entered an Order on January 14, 2015 (ECF No. 320),  
8 finding Defendants Cow Palace, LLC, The Dolsen Companies, and Three D  
9 Properties, LLC, (hereinafter "Defendants") in violation of the Resource  
10 Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 *et seq.*, by causing or  
11 contributing to an imminent and substantial endangerment to human health and the  
12 environment and by disposing of solid waste in such a manner as to constitute open  
13 dumping;

14 WHEREAS the Plaintiffs have agreed to forego their request for a complete  
15 RCRA Corrective Action study and instead work with Defendants to take immediate  
16 measures to address what Plaintiffs contend are the most significant and likely  
17 sources of contamination and to ensure that the local community is provided access  
18 to safe and clean drinking water;

19 WHEREAS the Parties mutually agree and request that the terms of this  
20 Consent Decree be presented to the United States Environmental Protection Agency

1 (EPA) for incorporation into the March 2013 Administrative Order on Consent  
2 (AOC) between the EPA and Defendants. It is the intent of the Parties that the terms  
3 of this Consent Decree will be incorporated into a new AOC and that EPA be  
4 appointed to oversee implementation of remedial actions set forth in this Consent  
5 Decree, and incorporated into the new AOC, as further explained herein;

6 WHEREAS after consultation with their respective counsel, Plaintiffs and  
7 Defendants (collectively referred to as the "Parties" and singularly as a "Party")  
8 hereby wish to settle this lawsuit to avoid the risks of further litigation and appeal  
9 and to resolve the controversy between them;

10 NOW, THEREFORE, upon the consent of the Parties, and upon consideration  
11 of the mutual promises contained herein, it is hereby ORDERED, ADJUDGED, and  
12 DECREED as follows:

13 **GENERAL PROVISIONS**

14 1. This Court has jurisdiction over the Parties and the subject matter of this  
15 lawsuit pursuant to 42 U.S.C. § 6972(a) and 28 U.S.C. § 1331. Venue is proper in  
16 this Court pursuant to 42 U.S.C. § 6972(a) and 28 U.S.C. § 1391(b). This Court  
17 shall have continuing jurisdiction over this lawsuit for the purposes of interpretation,  
18 enforcement, and, if necessary, modification of this Consent Decree.

1 2. The undersigned representative for each Party certifies that he/she is fully  
2 authorized by the Party whom he/she represents to enter into the terms and  
3 conditions of this Consent Decree and to legally bind the Party to it.

4 3. This Consent Decree shall apply to and be binding upon the Parties to this  
5 lawsuit and upon all successors and assigns of the Parties. This provision is  
6 intended to require full compliance with this Consent Decree so long as any portion  
7 of the Dairy Facility<sup>1</sup> is used by any person or entity in the course of conducting  
8 dairy operations, including the application of manure. However, nothing herein  
9 shall prevent Defendants from discontinuing their dairy operations, or from  
10 transferring any of the Dairy Facility to other owners for uses other than for dairy  
11 operations; this Consent Decree shall no longer apply to real property that is not  
12 being used for dairy operations or other agriculturally related operations that involve  
13 the application of nitrogen fertilizers. Defendants, or any of their successors or  
14 assigns, may sell the Dairy, or any of the real property upon which the Dairy or its  
15 operations may currently be conducted, without Plaintiffs' consent and without

16  
17 <sup>1</sup> The term "Dairy" or "Dairy Facility" shall refer to those facilities commonly  
18 known as the Cow Palace Dairy, as described in Appendix A of the AOC, as well as  
19 the properties owned or leased by Defendants named herein used by the Dairy for  
20 manure applications.

1 approval of the Court; provided, however, that Defendants provide a copy of the  
2 Consent Decree to new owner and provide written notice to Plaintiffs of the sale  
3 within 30 days of closing.

4 4. This Consent Decree constitutes the final, complete, and exclusive agreement  
5 and understanding of the Parties with respect to the settlement embodied in this  
6 Consent Decree and the subject matter of this lawsuit. The Parties hereby  
7 acknowledge that there are no representations or understandings relating to the  
8 lawsuit or its settlement other than those expressly contained within this Consent  
9 Decree. This Consent Decree expressly supersedes, extinguishes and replaces all  
10 prior stipulations and agreements between the Parties.

11 5. This Consent Decree, and the AOC that incorporates its terms, may not be  
12 modified in any material respect except by explicit written amendment agreed to by  
13 the Parties. Non-material modifications may be made by the Parties upon written  
14 consent.

15 6. This Consent Decree constitutes the full and complete settlement of all claims,  
16 rights, demands, and causes of any action of any kind for Defendants' alleged  
17 violations, through the date of entry of the Consent Decree, that Plaintiffs asserted or  
18 could have asserted against the Defendants in this lawsuit. Plaintiffs hereby release  
19 all such claims and covenant not to sue Defendants in connection with them. This  
20 covenant not to sue in no way releases Defendants from compliance with this

1 Consent Decree or other applicable law. Furthermore, this covenant not to sue shall  
2 in no way limit Plaintiffs' ability to enforce the terms of this Consent Decree, as  
3 incorporated into the new AOC, or any future and previously unalleged violations of  
4 law committed by Defendants.

5 7. Each Party acknowledges and represents that it has relied on the legal advice  
6 of its attorneys, all listed at the end of the Consent Decree, who are the attorneys of  
7 its own choice, and that the terms of this Consent Decree have been completely  
8 explained to the Party by its attorney(s), and that the terms are fully understood and  
9 voluntarily accepted.

10 8. In the event that any part of this Consent Decree is deemed by a court of  
11 competent jurisdiction to be unlawful, void, or for any reason unenforceable, and if  
12 that part is severable from the remainder of the Consent Decree without frustrating  
13 its essential purpose, then the remaining parts of the Consent Decree shall remain  
14 valid, binding, and enforceable.

15 9. If for any reason the Court should decline to approve this Consent Decree in  
16 the form presented, then the Parties agree to continue negotiations in good faith in an  
17 attempt to cure the objection(s) raised by the Court to entry of this Consent Decree.

18 10. This Consent Decree may be signed in counterparts, and such counterpart  
19 signature page shall be given full force and effect.  
20

11. The Dairy is presently located at 1631 North Liberty Road, near Granger, WA. The Dairy meets the federal and state law definitions of a large concentrated animal feeding operation or "CAFO."

12. In operating the Dairy, Defendants shall abide by this Consent Decree, the Resource Conservation and Recovery Act, the Federal Water Pollution Control Act ("Clean Water Act"), the Washington Dairy Nutrient Management Act, RCW 90.64 *et seq.*, and the Dairy's Nutrient Management Plan (NMP). If any of the terms of this Consent Decree are stricter than the aforementioned laws, then the terms of the Consent Decree shall control. If any of these laws are stricter than the terms of the Consent Decree, either now or in the future, such stricter laws shall apply.

Notwithstanding the foregoing, the Parties agree that nothing in this Consent Decree may be construed to obligate Defendants to violate any law, regulation, or the current terms of the AOC. In the event of any perceived conflict, the Parties agree to submit the matter to the dispute resolution process described in paragraph 56.

13. Defendants shall update their NMP to reflect the requirements set forth herein within 45 days of entry of the Consent Decree and provide a copy to Plaintiffs for review and comment.

#### **OVERSIGHT OF CONSENT DECREE IMPLEMENTATION**

14. At the request of the Parties and the Court, and to the extent agreed to by EPA, EPA shall oversee implementation and enforcement of the terms of the



1 Consent Decree. Further, any and all reports and information required to be  
2 produced to the EPA under the AOC shall hereafter be simultaneously provided to  
3 Plaintiffs' designee(s).

4 **SITE INSPECTIONS AND RECORD KEEPING**

5 15. For the duration of this Consent Decree, EPA shall be allowed to inspect the  
6 Dairy Facility, including any application fields owned, leased, or otherwise  
7 controlled by the Defendants, upon reasonable notice and at reasonably convenient  
8 times. Plaintiffs may designate up to four individuals to accompany EPA on any  
9 such inspection; provided, however, that any such designated individuals shall  
10 possess reasonable scientific or professional credentials so as to provide a  
11 meaningful assessment of Defendants' progress under this Consent Decree.

12 16. Inspections shall be conducted between the hours of 8:00 AM and 6:00 PM on  
13 weekdays, unless otherwise agreed to by the Parties. Plaintiffs' representatives shall  
14 be accompanied at all times by a representative of Defendants' choosing.

15 17. For the duration of this Consent Decree, Defendants agree to make available  
16 to Plaintiffs, at no cost to Plaintiffs, electronic copies of any reports, correspondence,  
17 sampling results, or other documents related to Cow Palace Dairy's Dairy Nutrient  
18 Management Plan, the Administrative Order on Consent ("AOC") between  
19 Defendants and EPA, and any documents generated as part of this Consent Decree.  
20 Defendants may withhold from Plaintiffs documents that are legitimately protected



1 by attorney-client privilege or the attorney work product doctrine. If Defendants  
 2 assert that a document is immune from production to Plaintiffs, then Defendants  
 3 shall provide to Plaintiffs a privilege log containing a description of the nature of the  
 4 document(s) withheld, its author and recipients, its date, the privilege or immunity  
 5 asserted, and a description of the content of the document which, without revealing  
 6 privileged or protected information, enables Plaintiffs to evaluate whether the  
 7 privilege or immunity is being properly asserted.

#### 8 **LAGOON LINING AND MAINTENANCE**

9 18. Defendants hereby agree to double line all lagoons with GCL liners and a 40  
 10 mil synthetic liner as set forth in the April 20, 2015 Dairy Lagoon Work Plan,  
 11 attached hereto as Exhibit 1, or as may reasonably be modified through the  
 12 discussions of Plaintiffs, Defendants, and the EPA. The lining shall occur in the  
 13 following lagoons no later than the date set forth for each lagoon. The name for  
 14 each lagoon corresponds to that on the Lagoon Review Report submitted to EPA  
 15 under the AOC on August 8, 2013.

- 16 a. Settling Basin A, by no later than December 31, 2015;
- 17 b. Settling Basin B, by no later than December 31, 2015;
- 18 c. Catch Basin NW, by no later than December 31, 2015;
- 19 d. Lagoon 1, by no later than December 31, 2016;
- 20 e. Lagoon 4, by no later than December 31, 2016;

1 f. Lagoon 2, by no later than December 31, 2017;

2 g. Lagoon 3, by no later than December 31, 2017;

3 h. Safety Debris Basin, by no later than December 1, 2018;

4 The Parties acknowledge that the above time-commitments are subject to the  
5 availability of materials, unanticipated weather or site conditions, and EPA's ability  
6 to review and approve the lagoon installation plans in a timely manner. Should the  
7 EPA fail to timely review and approve the lagoon installation plans, and/or should  
8 unanticipated weather or site conditions or the unavailability of materials cause  
9 delay, the Parties agree to reconvene their discussions and agree to new date(s) or to  
10 otherwise submit this matter to the dispute resolution process set forth in Paragraph  
11 56. Notwithstanding the foregoing, Defendants hereby covenant to use their best  
12 efforts and to hire such consultants and contractors as may be reasonably necessary  
13 to accomplish the installations on the dates set forth above.

14 19. Catch Basin NE is not included in the lining plan because it is slated for  
15 elimination and abandonment. Such elimination and abandonment shall be  
16 completed prior to December 31, 2016, and shall be performed consistent with the  
17 requirements of NRCS Conservation Standard Practice No. 360.

18 20. Defendants shall provide to Plaintiffs a copy of the Pre-Final (90%) Design  
19 addressed in Section 6.1 of Exhibit 1 within three (3) business days after such  
20

1 document is provided to EPA. Plaintiffs may provide comments to Defendants and  
2 EPA within 30 days.

3 21. At least 60 days prior to beginning work on any liner installation, Defendants  
4 shall provide to Plaintiffs an installation plan and QAPP for review and comment.  
5 Plaintiffs may provide comments to Defendants and EPA within 30 days

6 22. To the extent EPA representatives are not present during liner installation,  
7 Plaintiffs may have two representatives present as observers at the Dairy during each  
8 distinct phase of liner installation: draw down and pump out; re-grading; addition  
9 and compaction of fill material; installation of liner materials. Such representatives  
10 shall have applicable scientific or professional qualifications to make their review  
11 meaningful and to confirm compliance with the Consent Decree and the Lagoon  
12 Plan. At least 48 hours prior to any such observation, Plaintiffs shall provide written  
13 notice of such intent to observe directly to Cow Palace and its counsel. Such notice  
14 shall include the names of the proposed observers, a description of the observers'  
15 qualifications (to the extent not already known), as well as the start and end time of  
16 the proposed period of observation. The representatives may not remain on site  
17 outside of work hours and must be accompanied by a representative of Defendants at  
18 all times (including being accompanied on and off the property).

19 **GROUNDWATER MONITORING**

20

23. Defendants and Plaintiffs disagree about whether it is reasonable or necessary to install additional monitoring wells south or southwest of the Dairy Facility, and in particular south of the Sunnyside Irrigation Canal. Plaintiffs contend that such monitoring wells are necessary to determine whether, how long, and in what magnitude Defendants' operations continue to contribute to groundwater contamination. Defendants contend that the combined provisions of the Consent Decree and the AOC eliminate any possibility of continuing or future contamination and are concerned that such downgradient monitoring wells may be impacted by significant contaminants from other sources. For the purposes of compromise, Defendants agree to fund the installation of a grid of 14 new monitoring wells. Such monitoring wells shall be installed as soon as practicable. The locations of the new wells are depicted in the map attached hereto as Exhibit 2 and are subject to location refinement as site conditions or property rights require. The Parties shall consult and agree on the new well locations. Plaintiffs shall have access to the actual monitoring well installation to ensure that all wells are installed as agreed. Defendants shall sample the new monitoring wells under the same terms and at the same time as sampling occurs under the AOC for the other monitoring wells installed on Defendants' property, and at least once per quarter during the term of this Consent Decree regardless of whether the AOC continues. At least 60 days prior to beginning work on monitoring well installation, Defendants shall provide to

1 Plaintiffs an installation plan and QAPP for review and comment. Plaintiffs shall  
2 provide comments within 30 days and the Parties must agree on the QAPP in writing  
3 at least 10 days before construction of the wells is allowed to commence.

4 24. All aspects of Defendants' obligations with respect to groundwater  
5 monitoring, as set forth above in Paragraph 23, are subject to review, approval, and  
6 modification by EPA under the AOC.

7 25. Defendants agree to provide to Plaintiffs in electronic form the laboratory  
8 results of each groundwater sampling event at the same time the results are provided  
9 to EPA.

#### 10 **CENTRIFUGE MANURE SEPARATOR**

11 26. As part of their commitment to reducing the nutrients applied to their farming  
12 operations, Defendants have installed and shall maintain a centrifuge manure  
13 separator at the Dairy. The Parties anticipate that operation of a centrifuge separator  
14 will reduce the nitrogen and phosphorus content of the Dairy's liquid manure.

15 27. The centrifuge separator shall operate "in-line" with the Dairy's existing  
16 manure separator system. "In-line" means that manure shall first be processed by  
17 the Dairy's pre-existing manure separator, then processed in the centrifuge separator,  
18 removing additional solids from the liquid manure. This procedure shall remain in  
19 place except for brief periods in which the centrifuge may be undergoing repair or  
20 maintenance.

1 28. Defendants shall provide Plaintiffs with data concerning nutrient removal and  
2 information about how the nutrients are to be used. Such information shall be  
3 provided to Plaintiffs within 90 days of entry of this Consent Decree and as part of  
4 the annual information required to be provided to Plaintiffs.

5 **UNDERGROUND CONVEYANCE INSPECTION**

6 29. Defendants agree to inspect all underground conveyance systems (piping,  
7 joints, manholes, inlet structures and discharge structures). Inspection shall consist  
8 of pressure testing of all transmission lines and/or video inspection and  
9 documentation of all underground structures. Results of all such inspections shall be  
10 provided to Plaintiffs' designated representative(s) within five (5) business days of  
11 completion. Leaks or improper piping shall be fixed so that all wastes are  
12 appropriately directed to lined lagoons.

13 **COW PENS**

14 30. No later than December 31, 2016, Defendants shall install concrete aprons  
15 along all water troughs within all the cow pens at the Dairy, with appropriate piping  
16 or diversion that redirects all collected wastewater to the Dairy's lagoon system.  
17 Aprons shall be constructed to generally applicable industry standards, with no less  
18 than ten (10) feet of concrete between the outside edge of the trough to the edge of  
19 the apron.  
20

1 31. No later than October 15, 2016, Defendants shall also install concrete at the  
2 terminal end of the alleyways in all of the cow pens at the Dairy, with appropriate  
3 piping or diversion that redirects all collected wastewater to the Dairy's lagoon  
4 system. Such concrete shall be no less than 100 square feet in size, the final size to  
5 be determined after consultation with the Plaintiffs, and shall reasonably cover the  
6 historical high-traffic or bottlenecked areas at the terminal ends of the alleyways.  
7 The concrete shall be repaired and/or replaced as the herd's travel patterns may  
8 dictate.

9 32. Effective upon entry of this Consent Decree, Cow Palace shall implement a  
10 protocol of regularly inspecting for and re-grading all low-lying or wet spots within  
11 all the cow pens at the Dairy. Upon identification of any ponding of water Cow  
12 Palace shall promptly take reasonable steps to alleviate such ponding, including, as  
13 may be appropriate, vacuuming and removing any ponded water from the pens. The  
14 re-grading process shall slope any low-lying or wet spots such that they no longer  
15 collect, or have the potential to collect, runoff from the cow pens. Such inspection  
16 and re-grade shall occur at least monthly as weather conditions allow, and as  
17 practical in months where weather conditions make re-grading problematic.

18 33. Manure shall be scraped in the cow pens at least weekly and any accumulated  
19 piles removed at least monthly.

20 **SILAGE AREA**



34. Effective upon entry of this Consent Decree, Cow Palace shall ensure that its Silage Area is located entirely on an impervious surface. For purposes of this section, the storage of natural products (hay, triticale, for example, but not corn) that are expected to be incorporated into silage are not considered located in the Silage Area, but rather are stored in synthetic AgBags in an area adjacent to the Silage Area. So long as the natural products are stored in synthetic AgBags, or containers of similar construction that prevent regular contact with soils, such natural products need not be maintained on an impervious surface. AgBags shall be positioned so that if there is any leachate it will be directed to an asphalt apron where it shall be collected and conveyed to the lagoons.

#### **COMPOST AREA**

35. No later than October 15, 2015, Cow Palace shall implement an Aerated Pile Pilot Project. Such Pilot Project shall include at least the elements included the Project Memo attached hereto as Exhibit 3. Upon completion of the Pilot Project, or by December 31, 2016, whichever is later, Cow Palace shall either: a) implement a comprehensive controlled aeration system, that measurably accelerates the reduction of moisture, increases oxygen levels, and provides temperature control; reduce the acreage of the Compost Operations to 30 acres or less; and conduct all Compost Operations on a surface with a permeability rating of at least  $1 \times 10^{-4}$  cm/sec, on a slope of at least 2% leading to an asphalt apron for collection of any leachate or

1 runoff; or b) Cow Palace shall declare the Pilot Project as failed and immediately  
2 resume settlement discussions on this issue with Plaintiffs.

3 **MANURE APPLICATION & FIELD MANAGEMENT**

4 36. Defendants shall ensure that all future applications of liquid and solid manure  
5 to agricultural fields owned, leased, or otherwise controlled by the Defendants are  
6 based upon the nutrient management budget contained in Exhibit 4. The nutrient  
7 budget requires Defendants to determine all future manure application rates based on  
8 residual soil nitrate and phosphorus levels, ensuring that manure is applied in  
9 agronomic quantities and rates as defined herein. Furthermore, the post-harvest  
10 sampling contemplated under this Consent Decree shall be conducted consistent  
11 with the post-harvest sampling requirements of the AOC.

12 37. As required by the AOC, Defendants shall take soil tests in all manure  
13 application fields following the 2015 harvest. To the extent any field that is owned,  
14 leased, or otherwise controlled by the Defendants has been shown, post-harvest, to  
15 have an average of greater than 40 ppm residual nitrate plus ammonium in the top  
16 two feet of the soil column, Defendants shall not apply to such field in 2016 until  
17 and unless the average is shown by subsequent test to be below 40 ppm. Thereafter  
18 Defendants may apply to agronomic rates and in accordance with the nutrient  
19 budget. In addition, for fields with more than 40 ppm phosphorus in the upper foot,  
20 based on a valid sample obtained during the 2015 calendar year, manure may only

1 be applied in a manner that, based upon a nutrient budget, seeks to reduce  
2 phosphorus application to less than 66.66 percent of crop removal. In addition,  
3 fields that exceed any of the numbers listed above shall be considered for planting in  
4 alfalfa during 2016.

5 38. To the extent any field that is owned, leased, or otherwise controlled by the  
6 Defendants which was shown, post-harvest 2016, to have an average of greater than  
7 35 ppm residual nitrate plus ammonium in the top two feet of the soil column,  
8 Defendants shall not apply to such field in 2017 until and unless the average is  
9 shown by subsequent test to be below 35 ppm. Thereafter Defendants may apply to  
10 agronomic rates and in accordance with the nutrient budget. In addition, for fields  
11 with more than 40 ppm phosphorus in the upper foot, based on a valid sample  
12 obtained during the 2017 calendar year, manure may only be applied in a manner  
13 that, based upon a nutrient budget, seeks to reduce phosphorus application to less  
14 than 66.66 percent of crop removal.

15 39. To the extent any field is owned, leased, or otherwise controlled by the  
16 Defendants which has been shown, post-harvest 2017, to have an average of greater  
17 than 30 ppm residual nitrate plus ammonium in the top two feet of the soil column,  
18 Defendants shall not apply to such field in 2018 until and unless the average is  
19 shown by subsequent test to be below 30 ppm. Thereafter Defendants may apply to  
20 agronomic rates and in accordance with the nutrient budget. In addition, for fields

1 with more than 40 ppm phosphorus in the upper foot, based on a valid sample  
2 obtained during the 2018 calendar year, manure may only be applied in a manner  
3 that, based upon a nutrient budget, seeks to reduce phosphorus application to less  
4 than 66.66 percent of crop removal.

5 40. To the extent any field owned, leased, or otherwise controlled by the  
6 Defendants has been shown, post-harvest 2018, to have an average of greater than 25  
7 ppm residual nitrate plus ammonium in the top two feet of the soil column,  
8 Defendants shall not apply to such field in 2019 and thereafter until and unless the  
9 average is shown by subsequent test to be below 25 ppm. Thereafter Defendants  
10 may apply to agronomic rates and in accordance with the nutrient budget. In  
11 addition, for fields with more than 40 ppm phosphorus in the upper foot, based on a  
12 valid sample obtained during the calendar year at issue, manure may only be applied  
13 in a manner that, based upon a nutrient budget, seeks to reduce phosphorus  
14 application to less than 66.66 percent of crop removal until such time as phosphorus  
15 levels are reduced to 40 ppm or less phosphorus in the upper foot of the soil column,  
16 based on a valid sample obtained during the calendar year of planting. Once 40 ppm  
17 is achieved, no applications of manure will be allowed that cause residual  
18 phosphorus levels to once again exceed 40 ppm.

19 41. In addition to the above limitations, if it appears that additional nutrients are  
20 required during the spring/summer growing season to any crop, Cow Palace shall

1 first take tissue samples to determine whether additional nutrients may be applied  
2 agronomically.

3 42. Furthermore, in the event any given field fails to meet the post-harvest nitrate  
4 limit in two consecutive years, then the nutrient budget shall be modified in a  
5 manner designed to consistently reach the post-harvest limit. Plaintiffs shall be  
6 consulted on any such modifications. If the Parties cannot agree to an acceptable  
7 modification prior to March 31st of the year following the second non-compliant  
8 test, then the matter shall be submitted to mediation and/or binding arbitration, at  
9 Cow Palace's expense.

10 43. It is Plaintiffs' position that the limits for application set forth herein are a  
11 compromise intended to achieve significant reduction of ongoing impacts but may  
12 not represent the scientific standards that may be needed to provide full, long-term  
13 environmental protection. Plaintiffs have agreed to limitations set forth herein, in  
14 conjunction with the Clean Water Project, in order to provide immediate relief to  
15 potentially impacted residents while the regulatory agencies address the longer-term  
16 standards necessary to protect human health and the environment.

17 44. Beginning immediately, Cow Palace shall ensure that all liquid manure  
18 applications to its fields are measured by flow meters, and that all application fields  
19 are equipped with at least two moisture sensor stations. The application and  
20 irrigation monitoring will be conducted in accordance with EPA-approved Cow

1 Palace "Irrigation Water Monitoring Quality Assurance Plan", dated November 20,  
2 2013. Each sensor station shall include a data logger with sensors at 1', 2', and 3' of  
3 depth, as well as a rain gauge. The data shall be transmitted via cell modem to a  
4 web-based software application that presents the data in tabular and graphical form.  
5 The water measurements shall be considered against projected evapotranspiration  
6 and anticipated crop needs, and irrigation recommendations will be made  
7 accordingly for each field, each week, for the entire irrigation season. The sensor  
8 system shall be outfitted with an alarm function that will immediately notify Cow  
9 Palace representatives if the moisture level in the third foot sensor reaches field  
10 capacity. If the third foot in any field reaches field capacity then irrigation shall be  
11 promptly discontinued.

12 45. Defendants shall make available to Plaintiffs copies of all manure  
13 management documents created by the Dairy, including but not limited to, field  
14 application summaries, third-party manure application summaries, soil sampling,  
15 manure sampling, regularly maintained moisture sensor data, handwritten field  
16 application logbooks, crop yield data, tissue sampling data, nutrient budgets, and  
17 nutrient planning and application documents generated by Defendants.

18 **PROVISION OF BOTTLED WATER OR REVERSE OSMOSIS SYSTEM**

19 46. Defendants agree to fund the provision of clean drinking water to eligible  
20 residences identified within the geographical area depicted on Exhibit 5 ("Covered

1 Area"). Eligible residences are those that have a valid test result from their drinking  
2 water source in the prior 5 years showing a nitrate level of 10 ppm or higher and no  
3 reverse osmosis system, and residences that do have a reverse osmosis system but  
4 that have a similarly valid test result showing nitrate level of 60 ppm or higher. This  
5 program is hereafter referred to as the "Clean Drinking Water Project."

6 47. The Parties hereby agree to have the Clean Drinking Water Project be  
7 administered by a third party, in consultation with CARE. For purposes of funding  
8 such Project, Defendants shall contribute \$3,000 per month for the first three months  
9 of this Consent Decree, and \$2,000 per month thereafter until the Consent Decree is  
10 terminated with respect to nitrates in drinking water. To the extent the contributions  
11 of Defendants and other parties do not cover all of the reasonable costs of the  
12 Project, Defendants agree to contribute additional monies as reasonably requested  
13 and supported by the third party administrator up to a limit of an additional \$25,000  
14 over the course of the Consent Decree.

15 48. The Parties agree that the purpose of the Project is to ensure that all eligible  
16 residences within the Covered Area are provided access to either bottled water or  
17 reverse osmosis systems. Bottled water must be obtained from a reliable  
18 commercial source, and the water must meet all applicable drinking water standards.  
19 Reverse osmosis systems may be installed instead of bottled water but bottled water  
20 must be provided until such systems are in place and functioning. All costs of



1 installation, maintenance and repair of alternative water systems shall be covered, to  
2 the extent funds are available, by the Project.

3 49. Bottled water service and/or reverse osmosis systems shall be offered to any  
4 eligible residence within the Covered Area. The Parties shall jointly propose that  
5 GWAC help facilitate the Project, and that a mutually agreed third party administer  
6 the Project. The specific protocols of the Project shall be determined by the third  
7 party in consultation with CARE, and CARE shall have authority to oversee and  
8 monitor the Project.

9 50. If CARE and the third party agree that the funds from Defendants or any other  
10 sources have fulfilled the purpose of the Project, then CARE and the third party may  
11 utilize any excess funds to supply clean drinking water to such persons or residences  
12 in the Granger/Outlook/Sunnyside area that they believe, in their joint discretion, to  
13 be most impacted by contaminated groundwater. In no event may any excess funds  
14 be refunded to Defendants.

15 51. Defendants' obligation to contribute to the Clean Drinking Water Project shall  
16 terminate only as provided below in paragraph 54(C).

17 **PAYMENT OF ATTORNEYS' FEES, EXPERT WITNESS FEES, AND**

18 **COSTS**

19 52. Within 60 days of entry of this Consent Decree by the Court, Defendants shall  
20 pay an initial amount of Plaintiffs' attorneys' fees, expert witness fees, and costs

1 incurred in association with this lawsuit, in the amount of \$300,000, to the Law  
2 Offices of Charles M. Tebbutt, P.C. Within 60 days such payment, Plaintiffs may  
3 petition the Court for an award of further reasonable attorneys' and expert fees and  
4 costs.

5 53. Defendants also agree to contribute a reasonable and limited sum for fees and  
6 costs that may be incurred in monitoring compliance with this Consent Decree in an  
7 amount not to exceed \$9,000 per year for 2015-2017 and \$4,000 per year thereafter  
8 until termination. Plaintiffs shall submit to Defendants' counsel, no later than  
9 January 30 of each year, an invoice for Plaintiffs' fees and costs related to the  
10 Consent Decree for the prior year. Payment shall be made within 30 days of the date  
11 of the invoice. If there is a dispute about the fees, then such dispute shall be  
12 resolved through the dispute resolution provisions set forth in Paragraph 56.

### 13 **TERMINATION**

14 54. This Consent Decree shall terminate as follows:

15 A. With the exception of the Clean Drinking Water Project and  
16 phosphorus, this Consent Decree shall terminate five years after entry if Defendants  
17 have complied with all material terms. Compliance with material terms means that  
18 Defendants will have, at a minimum:

19 a. Provided reasonable and timely access to EPA and Plaintiffs  
20 representatives as contemplated in the Consent Decree;

1           b.     Substantially and in good-faith complied with all record-keeping, notice  
2 and document production obligations;

3           c.     Substantially and in good-faith complied with all obligations under the  
4 AOC, including in particular the Immediate Source Control Actions;

5           d.     Timely installed lagoons in a manner consistent with an approved  
6 lagoon plan, and maintained and repaired the lagoons in a manner consistent with  
7 industry standards;

8           e.     Installed, maintained, monitored and reported information from the new  
9 monitoring wells in a manner consistent with their obligations herein;

10          f.     Managed the centrifuge, compost, pens, underground conveyances,  
11 silage, and other dairy operations in a manner consistent with best dairy practices,  
12 the nutrient management plan, and their obligations herein;

13          g.     Substantially complied with their obligations under the Application  
14 Management and Irrigation Water Management Plans, and **strictly** complied with  
15 their duty to **only** apply at agronomic rates, within the nutrient budget, and  
16 exclusively as allowed under this Consent Decree;

17          h.     Consistently achieved post-harvest limits of 25 ppm nitrate average,  
18 including ammonium, in the top two feet, in at least half of their fields, with  
19 demonstrable downward trends in all other fields; and provided that all obligations  
20

1 as they relate to nitrates shall continue to be honored and observed under the Dairy's  
2 nutrient management plan.

3 B. This Consent Decree shall terminate with respect to obligations relating  
4 to phosphorus only when at least 50% of Defendants' fields have tested post-harvest  
5 at or less than 40ppm average in the top two feet of the fields, and with  
6 demonstrable downward trends in all other fields. Notwithstanding the termination  
7 of this Consent Decree, the provisions herein as they relate to phosphorus shall  
8 continue to be honored and observed under the Dairy's Nutrient Management Plan.

9 C. With respect to the Clean Drinking Water Project, and for those  
10 provisions that have not otherwise terminated with respect to the other obligations  
11 set forth in paragraph A, above, this Consent Decree shall terminate only when the  
12 13 "Determinative Wells" test at 10 ppm nitrate for 8 consecutive quarters; or when  
13 the collection of data from all wells shows a consistent downward trend, such that a  
14 reasonable person would conclude that the Dairy is no longer a significant source of  
15 nitrates to groundwater. The 13 Determinative Wells include the following: new  
16 wells 2-8 as shown on Exhibit 2, and YVD wells 8, 9, 10, 15, DC-03, DC-03D. To  
17 the extent the Parties do not agree as to whether or when this Consent Decree shall  
18 terminate, the matter shall be submitted to the dispute resolution process, and if need  
19 be to the Court for hearing and resolution.

20 **INTEGRATION**

1 55. This Consent Decree constitutes the final, complete, and exclusive agreement  
2 and understanding among the Parties with respect to the settlement reflected in this  
3 Consent Decree, and supersedes all prior agreements and understandings among the  
4 Parties related to the subject matter in this Consent Decree.

#### 5 **DISPUTE RESOLUTION**

6 56. In the event of any dispute regarding implementation, interpretation, or  
7 compliance with this Consent Decree, the Parties shall first attempt to informally  
8 resolve that dispute through meetings of the Parties. Any Party may initiate the  
9 informal dispute resolution process by serving written notice of a request for dispute  
10 resolution on the other Party. If no resolution is reached within thirty (30) calendar  
11 days of the date that the notice of a request for dispute resolution is served, then the  
12 Parties may resolve the dispute by filing motions with the Court.

#### 13 **EFFECTIVE DATE**

14 57. The effective date of this Consent Decree shall be the date upon which the  
15 Court enters in the civil docket a copy of this Consent Decree signed by the Court.

#### 16 **FINAL JUDGMENT**

17 58. Upon approval and entry of this Consent Decree by the Court, this Consent  
18 Decree shall constitute a final, non-appealable judgment of the Court under Rules 54  
19 and 58 of the Federal Rules of Civil Procedure.

#### 20 **NOTICES**

59. Whenever notice is required to be given or a document is required to be sent by one Party to another under the terms of this Consent Decree, it shall be directed to the individuals at the addresses specified below, unless prior notice of a change has been given to the other Party. A notice is sufficient under this Consent Decree if it is provided in writing through U.S. mail, hand-delivered, or provided electronically by e-mail, with e-mail being the first choice for all communications. If notice is provided via U.S. mail, it shall be considered effective upon the date of mailing.

For Plaintiffs CARE and CFS:

Charles M. Tebbutt, Law Offices of Charles M. Tebbutt (e-mail to be provided), attention: Yakima Valley Dairies Consent Decree)

For Defendants:

Brendan Monahan, Stokes Lawrence Velikanje Moore & Shore (e-mail to be provided), attention: Yakima Valley Dairies Consent Decree

The Parties shall exchange designated e-mail addresses to be used in accordance with this Section no later than three (3) business days after entry of this Consent Decree. Any Party may change either the notice recipient or the address for providing notices to it by serving the other Parties with a notice setting forth such new notice recipient or address.

1 WE HEREBY CONSENT to the Entry of this Consent Decree.

2 COMMUNITY ASSOCIATION FOR  
3 RESTORATION OF THE ENVIRONMENT, INC.

4 By: Helen Reddout

Helen Reddout, President

5 CENTER FOR FOOD SAFETY, INC.,

6 By: \_\_\_\_\_

George Kimbrell, Senior Attorney

7 ***Plaintiffs***

8 COW PALACE, LLC

9 By: R. William Dolsen

10 R. William Dolsen, Manager

11 THE DOLSEN COMPANIES

12 By: R. William Dolsen

R. William Dolsen, President

13 THREE D PROPERTIES, LLC

14 By: R. William Dolsen

15 R. William Dolsen, Manager

16 ***Defendants***

17 IT [CT1] IS SO ORDERED THIS \_\_\_\_\_ Day of May, 2015.

18  
19 THOMAS O. RICE  
United States District Judge

20 [PROPOSED] CONSENT DECREE



1 WE HEREBY CONSENT to the Entry of this Consent Decree.

2 COMMUNITY ASSOCIATION FOR  
3 RESTORATION OF THE ENVIRONMENT, INC.

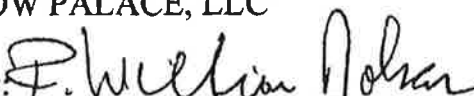
4 By: \_\_\_\_\_  
Helen Reddout, President

5 CENTER FOR FOOD SAFETY, INC.,

6 By:  \_\_\_\_\_  
George Kimbrell, Senior Attorney

7 ***Plaintiffs***

8 COW PALACE, LLC

9 By:  \_\_\_\_\_  
10 R. William Dolsen, Manager

11 THE DOLSEN COMPANIES

12 By:  \_\_\_\_\_  
R. William Dolsen, President

13 THREE D PROPERTIES, LLC

14 By:  \_\_\_\_\_  
15 R. William Dolsen, Manager

16 ***Defendants***

17 IT <sup>(C1)</sup> IS SO ORDERED THIS \_\_\_\_\_ Day of May, 2015.

18  
19 \_\_\_\_\_  
THOMAS O. RICE  
United States District Judge

20 ~~PROPOSED~~ CONSENT DECREE

1 WE HEREBY CONSENT to the Entry of this Consent Decree.

2 COMMUNITY ASSOCIATION FOR  
3 RESTORATION OF THE ENVIRONMENT, INC.

4 By: \_\_\_\_\_  
Helen Reddout, President

5 CENTER FOR FOOD SAFETY, INC.,

6 By: \_\_\_\_\_  
George Kimbrell, Senior Attorney

7 ***Plaintiffs***

8 COW PALACE, LLC

9 By: R. William Dolsen  
10 R. William Dolsen, Manager

11 THE DOLSEN COMPANIES

12 By: R. William Dolsen  
R. William Dolsen, President

13 THREE D PROPERTIES, LLC

14 By: R. William Dolsen  
15 R. William Dolsen, Manager

16 ***Defendants***

17 IT [CT1] IS SO ORDERED THIS 19<sup>th</sup> Day of May, 2015.

18 Thomas O. Rice  
19 THOMAS O. RICE  
20 United States District Judge

[PROPOSED] CONSENT DECREE

Respectfully submitted this 11th day of May, 2015 and effective on the date entered by the Court.

s/ Brad J. Moore

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s/ Charles M. Tebbutt

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s/ Toby James Marshall

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12 [prestoncarter@givenspursley.com](mailto:prestoncarter@givenspursley.com)

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15 Ralph H. Palumbo

16 Summit Law Group

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19 [ralphp@summitlaw.com](mailto:ralphp@summitlaw.com)

20 *Counsel for The Dolsen Companies and  
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s/Brendan V. Monahan

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*Counsel for Defendant Cow Palace LLC*